

ENTERED

October 22, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

BADFISH CHARTERS,

Plaintiff,

VS.

VIRGINIA DIESEL & TRUCK REPAIR,
INC.,

Defendant.

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CIVIL ACTION NO. 2:21-CV-00130

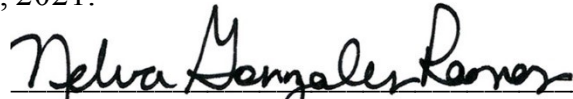
ORDER

Before the Court is Plaintiff's Motion for Leave to File First Amended Complaint (D.E. 12), seeking the Court's consideration of its amended complaint (D.E. 13) filed simultaneously with the motion. Defendant filed a response (D.E. 15) raising numerous complaints under Rule 12(b)(6) and applicable law regarding the sufficiency of the proposed pleading and arguments on the merits of the causes of action. Plaintiff filed a reply (D.E. 16) in excess of the page limits so as to address the Rule 12(b)(6) complaints.

The 12(b)(6) arguments and responses should be considered in a separate motion so that Plaintiff's motion for leave can be considered on its merits consistent with the Court's ordinary motion practice. The only other issue Defendant raised in opposition to granting leave to file the amended complaint is that it represents a practice that is not commended because the lawsuit was filed on a breach of contract action during the 60-day time period that Defendant ordinarily has to attempt to settle the proposed DTPA claim without incurring the costs of suit. Defendant thus complains that the amended complaint is prejudicial gamesmanship. The Court rejects this argument.

Consequently, the Court **GRANTS** the motion for leave to file amended complaint (D.E. 12) and deems the amended complaint (D.E. 13) duly filed. The Court **INSTRUCTS** the Clerk of Court to refile Defendant's response (D.E. 15) as a motion to dismiss on the docket of this case. The Court further **INSTRUCTS** the Clerk of Court to then refile Plaintiff's reply (D.E. 16) as a response to the motion to dismiss. The Court takes the motion to dismiss and its response under advisement for consideration in due course.

ORDERED this 22nd day of October, 2021.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE